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## EX PARTE PRESENTATION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Sandwich Isles Communications, Inc., Petition for Declaratory  
Ruling, WC Docket No. 09-133

Dear Ms. Dortch:

This is a brief response on behalf of the National Exchange Carrier Association (“NECA”) to the ex parte letter that Sandwich Isles Communications, Inc. (“SIC”) filed on March 7, 2012 (“Letter”), in the above-captioned matter.

SIC argues that, under the contract between it and NECA, NECA “has no legal right to unilaterally over-ride a Pool Member’s actions . . . .” Letter at 3. Although SIC mentions the “Dispute Resolution” section of the contract, nothing in that section prohibits NECA from evaluating the cost studies of member companies to determine whether they comply with Commission rules and orders. SIC made this same argument earlier in the proceeding, which the FCC rejected, *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, Declaratory Ruling, WC Docket No. 09-133, DA 10-1880, ¶ 27 (Wir. Comp. Bur., rel. Sept. 29, 2010) (“*Declaratory Ruling*”), and which was not challenged in its petition for reconsideration.

In fact, the contract between the parties requires both NECA and member companies to follow Commission rules. Agreement, § II. The FCC has made clear that NECA has the obligation to correct any data that it reasonably believes does not comply with Commission rules. See, e.g., *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Process*, CC Docket No. 93-6, *Report and Order and Order to Show Cause*, 10 FCC Rcd. 6243, ¶¶ 38-40 (1995) (“*Safeguards Order*”). NECA is simply complying with its mandated duties when it requires changes to member company data. If SIC disagrees with NECA’s determinations it is free to file a declaratory ruling petition.

SIC also argues at some length in its Letter that NECA’s methodology for excluding revenues derived from unregulated services from the costs associated with its submarine and related terrestrial network violates the *Declaratory Ruling*. Letter at

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1-2. NECA fully outlined its position on this matter in its February 27, 2012 ex parte letter filed in this docket. Notably, SIC does not respond to NECA's interpretation of the clear language in the *Ruling*. Rather, it claims, without citation, that the FCC stated in the *Declaratory Ruling* that 50 percent of the "disputed" lease costs were unregulated and 50 percent were regulated, and the regulated revenue requirement should not be reduced based on unregulated data.

As NECA pointed out in its February 27 ex parte letter, the precise language that the FCC used in directing the exclusion of unregulated data from SIC's revenue requirements does not state what SIC claims it does. In fact, the *Declaratory Ruling* concludes that SIC only justified \$1.9 million as "used and useful", and failed to show that SIC required even 50 percent of the disputed costs to provide regulated services in the foreseeable future. Nonetheless, the FCC allowed inclusion of 50 percent of the "disputed" costs based on other equitable factors. *Declaratory Ruling*, ¶¶ 9 n.30, 17. But this is not a conclusion that 50 percent of the investment is "used and useful" and that the amount cannot be changed when there are other uses of the investment. Footnote 30 of the *Declaratory Ruling* explicitly requires a contrary conclusion to SIC's because unregulated data is subtracted directly from the "disputed" amount before computing the 50 percent allowance. We should note that this footnote was never challenged in SIC's petition for reconsideration, and therefore it is too late now to make policy arguments that the conclusion was improper.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket. Please let me know if you have further questions.

Sincerely,

/s/ Gregory J. Vogt

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